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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IBM CORPORATION,	Case No. 22-cv-9910
Plaintiff-Counterdefendant,	ECF Case
- against -	
MICRO FOCUS (US), INC.	
Defendant-Counterclaimant.	

ANSWER TO MICRO FOCUS (US), INC.'S COUNTERCLAIMS

Plaintiff-Counterdefendant IBM Corporation ("IBM" or "Plaintiff"), by and through its

attorneys, Kirkland & Ellis LLP, hereby answers Defendant-Counterclaimant Micro Focus (US),

Inc.'s ("Micro Focus") Counterclaims, Dkt No. 99, as follows:

1.   IBM states that the allegations contained in Paragraph 1 of the Counterclaims are

conclusions of law as to which no response is necessary. To the extent any response is required,

IBM denies the allegations in Paragraph 1, except admits that this Court has jurisdiction as to Micro Focus's Counterclaims.

2.   IBM states that the allegations contained in Paragraph 2 of the Counterclaims are conclusions of law as to which no response is necessary. To the extent any response is required, IBM denies the allegations in Paragraph 2, except admits that this Court has jurisdiction as to Micro Focus's Counterclaims.

3.   IBM states that the allegations contained in Paragraph 3 of the Counterclaims are conclusions of law as to which no response is necessary. To the extent any response is required, IBM admits the allegations in Paragraph 3.

4.   IBM states that the allegations contained in Paragraph 4 of the Counterclaims are conclusions of law as to which no response is necessary. To the extent any response is required, IBM denies the allegations in Paragraph 4, except admits that venue is proper in this District for only the purposes of the present case.

5.   IBM admits the allegations contained in Paragraph 5 of the Counterclaims.

6.   IBM denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 6 of the Counterclaims.

7.   IBM denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 7 of the Counterclaims, except denies that Micro Focus modernizes mainframe applications, and admits Micro Focus developed Micro Focus® Enterprise Developer™.

8.   IBM denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 8 of the Counterclaims, except admits Micro Focus developed

Micro Focus Enterprise Server™ and that one of the reasons it did so was to re-platform IBM z/OS applications.

9.   IBM denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 9 of the Counterclaims, except admits that Micro Focus® Enterprise Developer™ and Micro Focus® Enterprise Server™ provide tools and that those tools can be used with CICS® TS applications.

10.   IBM denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 10 of the Counterclaims, except admits that Micro Focus® Enterprise Server™ and Micro Focus® Enterprise Developer™ are referred to collectively as Micro Focus® Enterprise Suite™.

11.   IBM denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 11 of the Counterclaims, except admits that Micro Focus® Enterprise Server™ and Micro Focus® Enterprise Developer™ have been distributed to the public in the United States.

12.   IBM denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 12, except admits that some of IBM's customers have used Micro Focus® Enterprise Developer™ and Micro Focus® Enterprise Server™.

13.   IBM denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 13 of the Counterclaims.

14.   IBM denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 14 of the Counterclaims, except admits that Micro Focus continues to distribute Micro Focus® Enterprise Server™ and Micro Focus® Enterprise Developer™.

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15.   IBM states that the allegations contained in Paragraph 15 of the Counterclaims are conclusions of law as to which no response is necessary. To the extent any response is required, IBM admits that it asserts that Micro Focus has infringed IBM's copyrights.

16.   IBM states that the allegations contained in Paragraph 16 of the Counterclaims are conclusions of law as to which no response is necessary. To the extent any response is required, IBM denies knowledge or information sufficient to form a belief as to the allegations in Paragraph 16, and states that Micro Focus's answer speaks for itself.

17.   IBM denies the allegations contained in Paragraph 17 of the Counterclaims.

18.   IBM denies the allegations contained in Paragraph 18 of the Counterclaims, except admits that it brought this action on November 21, 2022.

19.   IBM denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 19 of the Counterclaims, except admits that it is one of the only companies in the world that currently manufactures and distributes mainframes and that customer pay hundreds of thousands of dollars for that technology.

20.   IBM denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 20 of the Counterclaims, except admits that Micro Focus® Enterprise Server™ and Micro Focus® Enterprise Developer™ can be used with IBM CICS® TS applications.

21.   IBM states that the allegations contained in Paragraph 21 of the Counterclaims are conclusions of law as to which no response is necessary. To the extent any response is required, IBM denies the allegations contained in Paragraph 21.

22.   IBM denies the allegations contained in Paragraph 22 of the Counterclaims, except admits that the asserted work is CICS® TS, which includes CICS® TS Web Services, and that CICS® TS Web Services uses a "web service binding file," known as a WSBIND file.

23.   IBM admits that the cited website contains the language quoted by Micro Focus, and states that the website speaks for itself.

24.   IBM admits that the cited website contains the language quoted by Micro Focus, and states that the website speaks for itself.

25.   IBM denies the allegations contained in Paragraph 25 of the Counterclaims, except admits that some web services software uses standardized technology.

26.   IBM admits that the cited website contains the language quoted by Micro Focus, and states that the website speaks for itself.

27.   IBM denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 27 of the Counterclaims, except admits that its CICS® TS supports standards including WSDL, XML, HTTP, WSIL, SOAP, and COBOL, and states that CICS® TS also contains source code, object code, structure, architecture, modules, algorithms, data structures, and control instructions that were independently created by IBM and contain creative expression beyond support for the aforementioned standards.

28.   IBM admits that the cited website contains the language quoted by Micro Focus, and states that the website speaks for itself.

29.   IBM admits that the cited website contains the language quoted by Micro Focus, and states that the website speaks for itself.

30.   IBM admits that the cited website contains the language quoted by Micro Focus, and states that the website speaks for itself.

31.   IBM admits that the cited website contains the language quoted by Micro Focus, and states that the website speaks for itself.

32.   IBM denies the allegations contained in Paragraph 32 of the Counterclaims, except admits that the WSDL definition contains types, messages, operations, port types, bindings, ports, and services.

33.   IBM states that the allegations contained in Paragraph 33 of the Counterclaims are conclusions of law as to which no response is necessary. To the extent any response is required, IBM denies the allegations contained in Paragraph 33, except admits that its CICS® TS supports the WSDL standard.

34.   IBM states that the allegations contained in Paragraph 34 of the Counterclaims are conclusions of law as to which no response is necessary. To the extent any response is required, IBM admits the allegations contained in Paragraph 34, and states that IBM does hold copyrights in its source code, object code, structure, architecture, modules, algorithms, data structures, and control instructions that were independently created by IBM and contain creative expression beyond that provided in the WSDL standard.

35.   IBM denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 35.

36.   IBM admits that the cited website contains the language quoted by Micro Focus, and states that the website speaks for itself.

37.   IBM states that the allegations contained in Paragraph 37 of the Counterclaims are conclusions of law as to which no response is necessary. To the extent any response is required, IBM denies the allegations contained in Paragraph 37 of the Counterclaims, except admits that its CICS® TS supports the WSIL standard.

38.   IBM states that the allegations contained in Paragraph 38 of the Counterclaims are conclusions of law as to which no response is necessary. To the extent any response is required, IBM admits the allegations contained in Paragraph 38, and states that IBM does hold copyrights in its source code, object code, structure, architecture, modules, algorithms, data structures, and control instructions that were independently created by IBM and contain creative expression beyond that provided in the WSIL standard.

39.   IBM admits that the cited website contains the language quoted by Micro Focus, and states that the website speaks for itself.

40.   IBM denies the allegations contained in Paragraph 40 of the Counterclaims, except admits that SOAP consists of: (a) an envelope that defines a framework for describing what is in a message and how to process it, (b) A set of encoding rules for expressing instances of application-defined data types, and (c) A convention for representing remote procedure calls and responses; and states that each of the aforementioned elements may contain optional additional attributes that are subject to creative choice.

41.   IBM admits that the cited website contains the language quoted by Micro Focus, and states that the website speaks for itself.

42.   IBM states that the allegations contained in Paragraph 42 of the Counterclaims are conclusions of law as to which no response is necessary. To the extent any response is required, IBM denies the allegations contained in Paragraph 42 of the Counterclaims, except admits that its CICS® TS supports the SOAP standard.

43.   IBM states that the allegations contained in Paragraph 43 of the Counterclaims are conclusions of law as to which no response is necessary. To the extent any response is required, IBM admits the allegations contained in Paragraph 43, and states that IBM does hold copyrights

in its source code, object code, structure, architecture, modules, algorithms, data structures, and

control instructions that were independently created by IBM and contain creative expression

beyond that provided in the SOAP standard.

44.   IBM denies the allegations contained in Paragraph 44 of the Counterclaims,

except admits that its CICS® TS Web Services complies with the WSDL standard, when

applicable.

45.   IBM admits that the cited website contains the language quoted by Micro Focus,

and states that the website speaks for itself.

46.   IBM states that the allegations contained in Paragraph 46 of the Counterclaims are

conclusions of law as to which no response is necessary. To the extent any response is required,

IBM denies the allegations contained in Paragraph 46.

47.   IBM denies the allegations contained in Paragraph 47 of the Counterclaims,

including without limitation Micro Focus's misleading use of the phrase "IBM's alleged

WSBIND file," except admits that the "WSBIND file" is created by source code or compiled

code.

48.   IBM states that its First Amended Complaint speaks for itself.

49.   IBM denies knowledge or information sufficient to form a belief as to the

allegations contained in Paragraph 49 of the Counterclaims, except admits that EBCDIC stands

for "Extended Binary Coded Decimal Interchange Code."

50.   IBM states that the allegations contained in Paragraph 50 of the Counterclaims are

conclusions of law as to which no response is necessary. To the extent any response is required,

IBM denies the allegations contained in Paragraph 50.

51.   IBM states that the allegations contained in Paragraph 51 of the Counterclaims are conclusions of law as to which no response is necessary. To the extent any response is required, IBM denies the allegations contained in Paragraph 51.

52.   IBM states that the allegations contained in Paragraph 52 of the Counterclaims are conclusions of law as to which no response is necessary. To the extent any response is required, IBM denies the allegations contained in Paragraph 52.

53.   IBM states that the allegations contained in Paragraph 53 of the Counterclaims are conclusions of law as to which no response is necessary. To the extent any response is required, IBM denies the allegations contained in Paragraph 53.

54.   IBM states that the allegations contained in Paragraph 54 of the Counterclaims are conclusions of law as to which no response is necessary. To the extent any response is required, IBM denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 54.

55.   IBM denies the allegations contained in Paragraph 55 of the Counterclaims, except admit that certain information about its CICS® TS WSBIND file is available to those outside IBM.

56.   IBM denies the allegations contained in Paragraph 56 of the Counterclaims, except admits that the language quoted by Micro Focus appears in the cited document, and states that the document speaks for itself.

57.   IBM states that the allegations contained in Paragraph 57 of the Counterclaims are conclusions of law as to which no response is necessary. To the extent any response is required, IBM denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 57, and states that Micro Focus's answer speaks for itself.

58.   IBM states that the allegations contained in Paragraph 58 of the Counterclaims are conclusions of law as to which no response is necessary. To the extent any response is required, IBM denies the allegations contained in Paragraph 58.

59.   IBM denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 59 of the Counterclaims.

60.   IBM denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 60 of the Counterclaims.

61.   IBM states that the allegations contained in Paragraph 61 of the Counterclaims are conclusions of law as to which no response is necessary. To the extent any response is required, IBM states that its First Amended Complaint speaks for itself.

62.   IBM states that the allegations contained in Paragraph 62 of the Counterclaims are conclusions of law as to which no response is necessary. To the extent any response is required, IBM denies the allegations contained in Paragraph 62, except admits there is an actual case or controversy between IBM and Micro Focus.

63.   IBM states that the allegations contained in Paragraph 63 of the Counterclaims are conclusions of law as to which no response is necessary. To the extent any response is required, IBM denies the allegations contained in Paragraph 63.

FIRST COUNTERCLAIM
(Declaratory Relief Regarding Non-Infringement of IBM's Alleged Works)

64.   IBM repeats and realleges each and every response to the foregoing paragraphs of the Counterclaim as if fully set forth herein.

65.   IBM states that the allegations contained in Paragraph 65 of the Counterclaims are conclusions of law as to which no response is necessary. To the extent any response is required, IBM admits that it owns the works asserted in this litigation.

66.   IBM states that the allegations contained in Paragraph 66 of the Counterclaims are conclusions of law as to which no response is necessary. To the extent any response is required, IBM denies the allegations contained in Paragraph 66.

67.   IBM states that the allegations contained in Paragraph 67 of the Counterclaims are conclusions of law as to which no response is necessary. To the extent any response is required, IBM denies the allegations contained in Paragraph 67.

68.   IBM states that the allegations contained in Paragraph 68 of the Counterclaims are conclusions of law as to which no response is necessary. To the extent any response is required, IBM denies the allegations contained in Paragraph 68.

69.   IBM states that the allegations contained in Paragraph 69 of the Counterclaims are conclusions of law as to which no response is necessary. To the extent any response is required, IBM denies the allegations contained in Paragraph 69, except admits its First Amended Complaint alleges that Micro Focus has infringed IBM's copyrights.

70.   IBM states that the allegations contained in Paragraph 70 of the Counterclaims are conclusions of law as to which no response is necessary. To the extent any response is required, IBM denies the allegations contained in Paragraph 70.

71.   IBM states that the allegations contained in Paragraph 71 of the Counterclaims are conclusions of law as to which no response is necessary. To the extent any response is required, IBM denies the allegations contained in Paragraph 71.

SECOND COUNTERCLAIM
(Declaratory Relief that IBM's alleged Copyrights are Invalid)

72.   IBM repeats and realleges each and every response to the foregoing paragraphs of the Counterclaim as if fully set forth herein.

73.   IBM states that the allegations contained in Paragraph 73 of the Counterclaims are conclusions of law as to which no response is necessary. To the extent any response is required, IBM admits that it owns the works asserted in this litigation.

74.   IBM states that the allegations contained in Paragraph 74 of the Counterclaims are conclusions of law as to which no response is necessary. To the extent any response is required, IBM denies the allegations contained in Paragraph 74.

75.   IBM states that the allegations contained in Paragraph 75 of the Counterclaims are conclusions of law as to which no response is necessary. To the extent any response is required, IBM denies the allegations contained in Paragraph 75.

76.   IBM states that the allegations contained in Paragraph 76 of the Counterclaims are conclusions of law as to which no response is necessary. To the extent any response is required, IBM denies the allegations contained in Paragraph 76.

77.   IBM states that the allegations contained in Paragraph 77 of the Counterclaims are conclusions of law as to which no response is necessary. To the extent any response is required, IBM denies the allegations contained in Paragraph 77.

78.   IBM states that the allegations contained in Paragraph 78 of the Counterclaims are conclusions of law as to which no response is necessary. To the extent any response is required, IBM denies the allegations contained in Paragraph 78.

79.   IBM states that the allegations contained in Paragraph 79 of the Counterclaims are conclusions of law as to which no response is necessary. To the extent any response is required,

IBM denies the allegations contained in Paragraph 79, except admits its First Amended

Complaint alleges that Micro Focus has infringed IBM's copyrights.

80.   IBM states that the allegations contained in Paragraph 80 of the Counterclaims are

conclusions of law as to which no response is necessary. To the extent any response is required,

IBM denies the allegations contained in Paragraph 80.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff-Counterdefendant IBM respectfully requests judgment against

Defendant-Counterclaimant Micro Focus on Micro Focus's Counterclaims as follows:

1.   Finding that Micro Focus takes nothing by its claims for relief;

2.   Finding that Micro Focus has infringed IBM's copyrights;

3.   Finding that IBM's copyrights are valid;

4.   Awarding IBM costs and disbursements of this action, including reasonable

attorney's fees pursuant to 17 U.S.C. § 505; and

5.   Granting such other, further, and different relief as the Court deems just and proper.

JURY TRIAL DEMANDED

IBM demands a jury trial on all issues so triable.

Dated: July 5, 2023

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